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E-filed August 28, 2013

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

IN RE:

KINSLEY RESOURCES INC., a  
Nevada Corporation

Debtor

BK-N 12-51217-btb  
CHAPTER 11

OBJECTION TO CLAIM OF  
FOURTH & ONE

Hearing Date: November 20, 2013

Hearing Time: 10:00 a.m.

Estimated Time for hearing: 1 hour

COMES NOW NEVADA INDUSTRIAL MINERALS LIMITED, a creditor in this case ("NIML"), who objects to the Claim of Fourth & One ("Fourth"). Fourth's claim is detailed in the Debtor's Schedule D, filed herein May 14, 2013 as a \$4,500,000 claim secured by patented and unpatented mining claims with an asserted value of \$16,129,784 (the "Claim").

This objection to the Claim is made pursuant to 11 USC Section 502(b) and local rule 3007, and is based on the following grounds:

1. The Claim is unsupported by fact or law and is therefore invalid.
2. Fourth's note, on information and belief, has been paid in full and therefore Fourth is not a creditor.
3. A copy of the first page of the Claim, being continuation sheet 1 of 1 of Debtor's Schedule D (Docket 39) is attached hereto.

1 In support of this Objection, NIML relies upon the declaration of K. Sue Trimmer,  
2 Esq., filed separately herewith, the below Points and Authorities, and the files and  
3 records in this case.

4 Respectfully submitted this 28th day of August, 2013.

5 WHITE LAW CHARTERED

6  
7 /s/ John White  
8 John White, Esq.

9 **POINTS AND AUTHORITIES**

10 **1 FACTS**

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12 Fourth loaned Debtor, Kinsley Resources Inc., significant monies on or about July 3,  
13 2007. Debtor issued its promissory note to Fourth and secured repayment of those  
14 funds with a deed of trust, recorded in the Office of the White Pine, Nevada, County  
15 Recorder as document # 338245, at book 480, pages 505 through 581, on July 18, 2007.  
16 On that same day, Fourth and Kinsley entered into a Kinsley Mountain Term Sheet  
17 ("Term Sheet"), which permitted Debtor to convert the note to an ownership interest  
18 in Debtor under certain circumstances. The following "Terms of the Deal" are found  
19 on page 2 of the Term Sheet:

20  
21 3) In the event that an immediate sale of the project to Dajobar Com-  
22 munity Investment, LLC (listed in the letter of intent) does not occur, the  
23 cash investors will receive a pro-rated share of 10% of the pretax profits of  
24 the Kinsley Resources Inc, related to this project. The note shall be deemed  
25 paid in full and the Deed of trust reconveyed through the issuance of shares  
26 equaling 10% equity in Kinsley Resources, Inc. shall be issued pro-rata to  
27 each investor (and or assignee) based upon each one's capital contribution.

28 . . .

1 A copy of that Term Sheet is attached as Exhibit 1 to the Declaration of Sue Trimmer,  
2 Esq. in Support, filed separately herewith.

3 Thereafter, Debtor asserted that it had converted the note to equity in accordance  
4 with the Term Sheet's provisions. See Exhibit 2 to the aforesaid Trimmer Declaration<sup>1</sup>  
5

## 6 **2 ARGUMENT**

### 7 **2.1 Applicable Standards/Standing**

8  
9 Though objections to claims are generally filed by the Trustee, 11 USC §502(a) allows  
10 any party in interest to object to a claim. §11 USC 502(b) provides that any claim  
11 for which a proof of claim has been filed will be allowed unless a party in interest  
12 objects. Movant is clearly a party in interest as its claim may be rendered wholly or  
13 partially unsecured as a practical matter if Fourth's Claim is allowed, to wit NIML's  
14 claim (Claim No. 4) is for \$5,156,671. Debtor's Schedule D shows that the Debtor  
15 values the property securing NIML's claim at \$9,171,838 and that the property se-  
16 curing NIML's junior claim is included within the property securing Fourth's senior  
17 (\$4,500,000) claim.  
18

19 If a party in interest objects, the court, after notice and hearing, will determine  
20 the amount of the claim and will generally allow the claim except to the extent to the  
21 extent that the claim is "unenforceable against the debtor ... under any ... applicable  
22 law for a reason other than because such claim is contingent or unmatured." §11  
23 USC 502(b)(1). A properly filed claim is presumed valid under Fed.R.Bankr.P. 3001(1).  
24 However, once an objection to the proof of claim is filed, the creditor ultimately bears  
25 the burden of persuasion as to the validity and amount of the claim<sup>2</sup>.

26 <sup>1</sup> At some point litigation ensued between Fourth and Debtor in the Superior Court of California,  
27 County of Orange, Central Justice Center (30-2009-00123993) ("California Litigation"). Exhibit 2  
28 is a Declaration of Debtor's President, Bruce Anderson. According to the Declaration of Sue Trimmer,  
Esq, Exhibit 2 was filed in connection with the California Litigation. NIML is informed and believes  
that the California Litigation was settled. However Fourth has to date refused to provide NIML with  
a copy of that settlement.

<sup>2</sup> *Ashforth v. Consolidated Pioneer Mortg. (In re Consolidated Mortg)*, 178 B.R. 222, 226 (9th Cir BAP

### **3 Fourth is not a secured creditor.**

Fourth has not filed a claim in this Chapter 11 Case, nor is it required to file one so long as it consents to the manner in which its claim was scheduled by the Debtor. Fed.R.Bankr.P. 3003. However, the information attached to the supporting Declaration of Sue Trimmer shows that Fourth's Claim has been paid. Therefore it should not be allowed.

### **4 Conclusion**

Based upon the foregoing, Debtors respectfully request that the Claim be disallowed in its entirety.

Dated this 28th day of August, 2013

WHITE LAW CHARTERED

/s/ John White  
John White, Esq.

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1995), *aff'd* 92 F.3d 151 (9th Cir. 1996).

B6D (Official Form 6D) (12/07)- Cont.

In re KINSLEY RESOURCES, INC.Case No. 12-51217

Debtor

(If known)

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.)	CODESTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.						300,000.00	0.00
EUCON CORP. & DEATLEY CRUSHING BRIEN DeATLEY 4418 E. 8TH AVE. SPOKANE VALLEY, WA 99212		PRINCIPAL BALANCE OF NOTE SECURED BY 6 UNPATENTED MINING CLAIMS IN ELKO COUNTY, NEVADA  VALUE \$948,811.00					
ACCOUNT NO.						4,500,000.00	0.00
FOURTH & ONE, LLC C/O PAUL LEEDS 401 WEST A STREET, STE. 2600 SAN DIEGO, CA 92101-7910		NOTE SECURED BY 44 LORD & SON UNPATENTED MINING CLAIMS, 54 KING UNPATENTED MINING CLAIMS IN ELKO AND WHITE PINE COUNTIES, AND 4 PATENTED MINING CLAIMS IN WHITE PINE COUNTY, NEVADA  VALUE \$16,129,784.00					
ACCOUNT NO.						100,000.00	0.00
LDP DIVERSIFIED LLC C/O JOSEPH DE LA PASION GENESIS REALTY SOLUTIONS LLC 427 SOUTH MEADOWBROOK LANE OLATHE, KS 66062		PRINCIPAL BALANCE OF NOTE SECURED BY STATE OF NEVADA APPROPRIATION PERMITS #52895, 80589, 80590 AND 80591 FOR WATER RIGHTS  VALUE \$11,282,000.00					
ACCOUNT NO.						155,088.04	0.00
VANCE, TERRY 100 ECNAV LANE CRESCENT CITY, CA 95531		PRINCIPAL BALANCE OF NOTE SECURED BY 5 UNPATENTED MINING CLAIMS IN ELKO COUNTY, NEVADA  VALUE \$790,676.00					

Sheet no. 1 of 1 continuation  
sheets attached to Schedule of  
Creditors Holding Secured  
Claims

Subtotal >  
(Total of this page)

Total >  
(Use only on last page)

\$ 5,055,088.04	\$ 0.00
\$ 6,117,319.12	\$ 0.00

(Report also on Summary of Schedules) (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data)